

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LATAVIOUS BEAL,

Petitioner,

v.

JOHN DAVIDS,

Respondent.

Case No. 1:20-cv-848

HON. JANET T. NEFF

OPINION AND ORDER

Now pending before the Court are Petitioner's Objections to the Magistrate Judge's Report and Recommendation (ECF No. 13). Petitioner, a state prisoner, brought this habeas corpus action on September 2, 2020, proceeding under 28 U.S.C. § 2254 (ECF No. 1). The case was referred to the Magistrate Judge. The Magistrate Judge's Report and Recommendation recommends that Petitioner's habeas corpus petition be denied and that a certificate of appealability be denied (ECF No. 9 at PageID.493). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court performs de novo consideration to those portions of the Report and Recommendation to which objections have been made. For the reasons stated below, the objections are overruled and denied, and the Court approves and adopts the Report and Recommendation.

The Court only performs de novo review to those portions of a report and recommendation to which clear and specific objections are raised. FED. R. CIV. P. 72(b)(3); *see Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995); *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam); *Weiler v. U.S. Dep't of Treasury-Internal Revenue Serv.*, No. 19-3729, 2020 WL 2528916, at *1 (6th Cir. Apr. 24, 2020) ("De novo review of a magistrate judge's recommendation is required

only where the objections filed were not frivolous and only applies to factual disputes.”). The Court will not revisit recast arguments that were thoroughly addressed by the Report and Recommendation. *See, e.g., Frans v. Comm’r of Soc. Sec.*, No. 2:18-CV-4, 2019 WL 3205838, at *1 (W.D. Mich. July 16, 2019); *Sims v. Comm’r of Soc. Sec.*, No. 16-11381, 2017 WL 2982274, at *1 (E.D. Mich. July 13, 2017). New arguments or circumstances raised for the first time in the objections will not be considered. *See Hannon v. Brintlinger*, No. 2:17-CV-33, 2018 WL 1141424, at *1 (W.D. Mich. Mar. 2, 2018) (citing and quoting *Murr v. United States*, 200 F.3d 895, 902 n.1 (6th Cir. 2000)).

Petitioner makes two principal objections: (1) that the Michigan sentencing court’s assessment of 10 points for offense variable 4 was not supported by a preponderance of the evidence; and (2) that the sentencing court abused its discretion in assessing 50 points for offense variable 7 “based on the unconstitutional use of judge found facts to impose a mandatory minimum sentence where there was no evidence presented at sentencing that the victim was treated with sadism, torture, excessive brutality, or similarly egregious conduct designed to substantially increase the fear and anxiety of the victim during the offense” (ECF No. 13 at PageID.520). Petitioner further contends that the sentencing judge relied on only one source of information in making the points assessment (*id.* at PageID.521).

Petitioner’s Objections fail to engage with the Magistrate Judge’s fundamental conclusion that Petitioner’s sentence fell within the state-law guidelines range and that any erroneous scoring of offense variable 4 in this case constituted harmless error because Petitioner’s minimum guidelines range would not change (ECF No. 9 at PageID.479, 485-487). In addition, all of Petitioner’s claims based on Michigan sentencing law are not available for habeas corpus relief because Petitioner has still not shown that his sentence scoring was based on materially false

information. *See Richards v. Taskila*, No. 20-1329, 2020 WL 8024582, at *4 (6th Cir. Sept. 1, 2020), *cert. denied*, 141 S. Ct. 1100 (2021) (“Reasonable jurists would agree that [petitioner’s] claim regarding the calculation of his sentence asserts only a matter of the application of state sentencing laws and is not cognizable on habeas review.”); *Wills v. Woods*, No. 16-2260, 2017 WL 4122571, at *1 (6th Cir. Sept. 1, 2017).

Finally, Petitioner’s Objections do nothing to disturb the Magistrate Judge’s conclusion that a certificate of appealability should be denied because Petitioner has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253; *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58.

Therefore:

IT IS HEREBY ORDERED that Petitioner’s Objections (ECF No. 13) are **OVERRULED AND DENIED**.

IT IS FURTHER ORDERED that the Court **APPROVES AND ADOPTS** the Magistrate Judge’s Report and Recommendation (ECF No. 9) as the Opinion of the Court.

Dated: July 21, 2022

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge